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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[DHS Docket No. ICEB-2011-0005]

RIN 1653-AA63

**Adjustments to Limitations on Designated School Official Assignment and Study by
F-2 and M-2 Nonimmigrants**

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is amending its regulations under the Student and Exchange Visitor Program (SEVP) to improve management of international student programs and increase opportunities for study by spouses and children of nonimmigrant students. This rule grants school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses. The rule also provides greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students with F-1 or M-1 nonimmigrant status to enroll in study at an SEVP-certified school so long as any study remains less than a full course of study. F-2 and M-2 spouses and children remain prohibited, however, from engaging in a full course of study unless they apply for, and DHS approves, a change of nonimmigrant status to a nonimmigrant status authorizing such study.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket ICEB-2011-0005 and are available online by going to <http://www.regulations.gov>, inserting ICEB-2011-0005 in the “Search” box, and then clicking “Search.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, telephone 703-603-3400, email: sevp@ice.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Regulatory History and Information

On November 21, 2013, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) entitled Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants in the Federal Register (78 FR 69778). We received 37 comments on the proposed rule. No public meeting was requested, and none was held. DHS is adopting the rule as proposed, with minor technical corrections.

II. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOS	Department of State
DSO	Designated school official
FR	Federal Register
HSPD-2	Homeland Security Presidential Directive No. 2
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act of 1952, as amended
INS	Legacy Immigration and Naturalization Service
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996

OMB	Office of Management and Budget
PDSO	Principal designated school official
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
§	Section symbol
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

III. Basis and Purpose

A. The Student and Exchange Visitor Program

DHS's Student and Exchange Visitor Program (SEVP) manages and oversees significant elements of the process by which educational institutions interact with F, J and M nonimmigrants to provide information about their immigration status to the U.S. Government. U.S. Immigration and Customs Enforcement (ICE) uses the Student and Exchange Visitor Information System (SEVIS) to track and monitor schools, participants and sponsors in exchange visitor programs, and F, J and M nonimmigrants, as well as their accompanying spouses and children, while they are in the United States and participating in the educational system.

ICE derives its authority to manage these programs from several sources, including:

- Section 101(a)(15)(F)(i), (M)(i) and (J) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1101(a)(15)(F)(i), (M)(i), and (J), under which a foreign national may be admitted to the United States in nonimmigrant status as a student to attend an academic school or language training program (F nonimmigrant), as a student to attend a vocational or other recognized nonacademic institution (M nonimmigrant), or as an exchange visitor (J

nonimmigrant) in an exchange program designated by the Department of State (DOS), respectively. An F or M student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of F and/or M students. See 8 U.S.C. 1372; 8 CFR 214.3.

- Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (codified at 8 U.S.C. 1372), which authorized the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, J or M nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable, and which further authorized the Secretary of Homeland Security to certify schools to participate in F or M student enrollment.
- Section 416(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, 115 Stat. 272 (USA PATRIOT Act), as amended, which provides for the collection of alien date of entry and port of entry information for aliens whose information is collected under 8 U.S.C. 1372.
- Homeland Security Presidential Directive No. 2 (HSPD-2), which, following the USA PATRIOT Act, requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of schools certified to accept F, J and/or M nonimmigrants to include checks for compliance with recordkeeping and reporting requirements, and authorizing termination of institutions that fail to comply. See 37 Weekly Comp. Pres. Docs. 1570, 1571-72 (Oct. 29, 2001); and

- Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543 (codified at 8 U.S.C. 1762), which directed the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1372 and INA section 101(a)(15)(F), (J) and (M), 8 U.S.C. 1101(a)(15)(F), (J) and (M), of all schools¹ approved for attendance by F, J and/or M students within two years of enactment, and every two years thereafter.

Accordingly, and as directed by the Secretary, ICE carries out the Department's ongoing obligation to collect data from, certify, review, and recertify schools enrolling these students. The specific data collection requirements associated with these obligations are specified in part in legislation, see 8 U.S.C. 1372(c), and more comprehensively in regulations governing SEVP found at 8 CFR 214.3.

B. Student and Exchange Visitor Information System

SEVP carries out its programmatic responsibilities through SEVIS, a Web-based data entry, collection and reporting system. SEVIS provides authorized users, such as DHS, DOS, other government agencies, SEVP-certified schools, and DOS-designated exchange visitor programs, access to reliable information to monitor F, J and M nonimmigrants for the duration of their authorized period of stay in the United States. As discussed in the NPRM, schools must regularly update information on their approved F, J and M nonimmigrants to enable government agencies to fulfill their oversight and investigation responsibilities, such as enabling accurate port of entry screening, assisting in the adjudication of immigration benefit applications, ensuring and verifying eligibility

¹ DHS oversees compliance of schools approved for attendance by J nonimmigrants; however, section 502(b) of this the Enhanced Border Security and Visa Entry Reform Act of 2002 assigns oversight of exchange visitor sponsors to the Secretary of State.

for the appropriate nonimmigrant status, monitoring nonimmigrant status maintenance, and, as needed, facilitating timely removal.

C. Importance of International Students to the United States

On September 16, 2011, DHS announced a “Study in the States” initiative to encourage the best and the brightest international students to study in the United States. As described in the NPRM, the initiative took various steps to enhance and improve the Nation's nonimmigrant student programs.² This rulemaking was initiated in support of the “Study in the States” initiative and to reflect DHS’s commitment to those goals. The rule improves the capability of schools enrolling F and M students to assist their students in maintaining nonimmigrant status and to provide necessary oversight on behalf of the U.S. Government. The rule also increases the attractiveness of studying in the United States for foreign students by broadening study opportunities for their spouses and improving quality of life for visiting families.

D. Removing the Limit on DSO Nominations

Designated school officials (DSOs) are essential to making nonimmigrant study in the United States attractive to international students and a successful experience overall. DHS charges DSOs with the responsibility of acting as liaisons between nonimmigrant students, the schools that employ the DSOs and the U.S. Government. Significantly, DSOs are responsible for making information and documents, including academic transcripts, relating to F-1 and M-1 nonimmigrant students, available to DHS for the Department to fulfill its statutory responsibilities. 8 CFR 214.3(g).

² See 78 FR 69780; see also “Study in the States,” U.S. Department of Homeland Security, <http://studyinthestates.dhs.gov> (last visited April 28, 2014).

When the Immigration and Naturalization Service (INS) in 2002 established a limit of ten DSOs in order to control access to SEVIS, the INS noted that once SEVIS was fully operational, it might reconsider the numerical limits on the number of DSOs. See 67 FR 76256, 76260. Since SEVIS is now fully operational and appropriate access controls are in place, DHS has reconsidered the DSO limitation, and, with this rule, eliminates the maximum limit of DSOs in favor of a more flexible approach. The rule sets no maximum limit on the number of DSOs per campus, and instead allows school officials to nominate an appropriate number of DSOs for SEVP approval based upon the specific needs of the school.

DHS believes that concerns raised within the U.S. educational community that the current DSO limit of ten per campus is too constraining are of strong merit. While the average SEVP-certified school has fewer than three DSOs, SEVP recognizes that F and M students often cluster at schools within States that attract a large percentage of nonimmigrant student attendance. As such, schools in the three States with the greatest F and M student enrollment represent 35 percent of the overall F and M nonimmigrant enrollment in the United States.³ In schools where F and M students are heavily concentrated or where campuses are in dispersed geographic locations, the limit of ten DSOs has been problematic. The Homeland Security Academic Advisory Council (HSAAC)—an advisory committee composed of prominent university and academic association presidents, which advises the Secretary and senior DHS leadership on academic and international student issues—included in its September 20, 2012 recommendations to DHS a recommendation to increase the number of DSOs allowed

³ See Student and Exchange Visitor Program, SEVIS by the Numbers (July 2014), page 15, available at <https://www.ice.gov/doclib/sevis/pdf/by-the-numbers1.pdf>.

per school or eliminate the current limit of ten DSOs per school. Upon review, DHS concluded that, in many circumstances, the elimination of a DSO limit may improve the capability of DSOs to meet their liaison, reporting and oversight responsibilities, as required by 8 CFR 214.3(g). Therefore, removing the limit on the number of DSOs that a school official is able to nominate for SEVP approval provides the appropriate flexibility to enhance the attractiveness of nonimmigrant study in the United States for international students and increase the program's success.

This rule does not alter SEVP's authority to approve or reject a DSO or principal designated school official (PDSO) nomination. See 8 CFR 214.3(l)(2). SEVP reviews each DSO nomination as part of the school certification process, and requires proof of the nominee's U.S. citizenship or lawful permanent resident status. SEVP further considers whether the nominee has served previously as a DSO at another SEVP-approved school and whether the individual nominee should be referred to other ICE programs for further investigation. Until the school and the nominee have been approved by SEVP, access to SEVIS is limited solely to the school official submitting the certification petition, and is restricted to entry of information about the school and the DSO nominees necessary to permit the school to initiate the Form I-17 petition process for approval. The nominee, if he or she is not the submitting school official, has no access to SEVIS while the application is pending. Any greater access to SEVIS, prior to approval, would undermine the nomination process and open the SEVIS program to possible misuse. The rule codifies this limitation. See new 8 CFR 214.3(l)(1)(iii). The rule also maintains SEVP's authority to withdraw a previous DSO or PDSO designation by a school of an individual. See 8 CFR 214.3(l)(2). Reasons for withdrawal include change in or loss of employment,

as well as noncompliance with SEVP regulations. In order to withdraw for noncompliance, SEVP would make a determination of noncompliance following suspension of a DSO's SEVIS access, individually or institutionally. DHS is of the opinion that the increased flexibility afforded by this rulemaking to nominate more than ten DSOs will permit schools to better meet students' needs as well as the Department's reporting and other school certification requirements.

E. Study by F-2 and M-2 Spouses and Children

This rulemaking also amends the benefits allowable for the accompanying spouse and children (hereafter referred to as F-2 or M-2 nonimmigrants) of an F-1 or M-1 student. On May 16, 2002, the former INS proposed to prohibit full-time study by F-2 and M-2 spouses and to restrict such study by F-2 and M-2 children to prevent an alien who should be properly classified as an F-1 or M-1 nonimmigrant from coming to the United States as an F-2 or M-2 nonimmigrant and, without adhering to other legal requirements, attending school full-time. 67 FR 34862, 34871. The INS proposed to permit avocational and recreational study for F-2 and M-2 spouses and children and, recognizing that education is one of the chief tasks of childhood, to permit F-2 and M-2 children to be enrolled full-time in elementary through secondary school (kindergarten through twelfth grade). Id. The INS believed it unreasonable to assume that Congress would intend that a bona fide nonimmigrant student could bring his or her children to the United States but not be able to provide for their primary and secondary education. Id.; see also 67 FR 76256, 76266. The INS further proposed that if an F-2 or M-2 spouse wanted to enroll full-time in a full course of study, the F-2 or M-2 spouse should apply

for and obtain a change of his or her nonimmigrant classification to that of an F-1, J-1, or M-1 nonimmigrant. 67 FR 34862, 34871.

The INS finalized these rules on December 11, 2002. 67 FR 76256 (codified at 8 CFR 214.2(f)(15)(ii) and 8 CFR 214.2(m)(17)(ii)). In the final rule, the INS noted that commenters suggested the INS remove the language “avocational or recreational” from the types of study that may be permitted by F-2 and M-2 dependents, as DSOs may have difficulty determining what study is avocational or recreational and what is not. In response to the comments, the INS clarified that if a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational. 67 FR 76266.

DHS maintains the long-standing view that an F-2 or M-2 nonimmigrant who wishes to engage in a full course of study in the United States, other than elementary or secondary school study (kindergarten through twelfth grade), should apply for and obtain approval to change his or her nonimmigrant classification to F-1, J-1, or M-1. See 8 CFR 214.2(f)(15)(ii) and 8 CFR 214.2(m)(17)(ii). However, as described in the NPRM, because DHS recognizes that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools, permitting access of F-2 or M-2 nonimmigrants to education while in the United States would help enhance the quality of life for many of these visiting families. The existing limitations on study to F-2 or M-2 nonimmigrant education potentially deter high quality F-1 and M-1 students from studying in the United States.⁴

⁴ See Letter of April 13, 2011 from NAFSA: Association of International Educators to DHS General Counsel Ivan Fong, available in the federal rulemaking docket for this rulemaking at www.regulations.gov, requesting that DHS eliminate the limitation on study by F-2 spouses to only “avocational or recreational”

Accordingly, DHS is relaxing its prohibition on F-2 and M-2 nonimmigrant study by permitting F-2 and M-2 nonimmigrant spouses and children to engage in study in the United States at SEVP-certified schools that does not amount to a full course of study. Under this rule, F-2 and M-2 nonimmigrants are permitted to enroll in less than a “full course of study,” as defined at 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)-(iv), at an SEVP-certified school and in study described in 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)-(iv).⁵ Regulations at 8 CFR 214.2(f)(6)(i)(B) and 8 CFR 214.2(m)(9)(i) currently define full course of study at an undergraduate college or university (F nonimmigrants) or at a community college or junior college (M nonimmigrants) to include lesser course loads if the student needs fewer than 12 hours to complete a degree or specific educational objective. This limited exception, which defines a course load of less than 12 hours as a full course of study, only applies to F-1 and M-1 nonimmigrants and will not apply to F-2 or M-2 dependents. Accordingly, an F-2 or M-2 dependent taking less than 12 hours cannot be deemed to be engaging in a full course of study. As stated in the NPRM, over time such enrollment in less than a full course of study could lead to attainment of a degree, certificate or other credential. To maintain valid F-2 or M-2 status, however, the F-2 or M-2 nonimmigrant would not be permitted at any time to enroll in a total number of credit hours that would amount to a “full course of study,” as defined by regulation.

study because the limitation “severely restricts the opportunities for F-2 dependents, such as spouses of F-1 students, to make productive use of their time in the United States.”

⁵ As a general matter, a full course of study for an F-1 academic student in an undergraduate program is 12 credit hours per academic term. Similarly, a full course of study for an M-1 vocational student consists of 12 credit hours per academic term at a community college or junior college. For other types of academic or vocational study, the term “full course of study” is defined in terms of “clock hours” per week depending on the specific program. See 8 CFR 214.2(f)(6)(i)(A)-(D) and 8 CFR 214.2(m)(9)(i)-(iv).

In addition, the change limits F-2 and M-2 study, other than avocational or recreational study, to SEVP-certified schools, in order to make it more likely that the educational program pursued by the F-2 or M-2 nonimmigrant is a bona fide program and that studies at the school are unlikely to raise national security concerns. The F-2 or M-2 nonimmigrants can still participate full-time in avocational or recreational study (i.e., hobbies and recreational studies). If an F-2 or M-2 nonimmigrant wants to enroll in a full course of academic study, however, he or she needs to apply for and obtain approval to change his or her nonimmigrant classification to F-1, J-1 or M-1. Similarly, as noted, the rule does not change existing regulations allowing full-time study by children in elementary or secondary school (kindergarten through twelfth grade).

This rule does not change the recordkeeping and reporting responsibilities of DSOs with regard to F-2 or M-2 nonimmigrants to DHS. DSOs at the school the F-1 or M-1 student attends retain reporting responsibility for maintaining F-2 or M-2 nonimmigrant personal information in SEVIS. See 8 CFR 214.3(g)(1). In addition, to facilitate maintenance of F or M nonimmigrant status and processing of future applications for U.S. immigration benefits, F and M nonimmigrants are encouraged to retain personal copies of the information supplied for admission, visas, passports, entry, and benefit-related documents indefinitely.⁶ Similarly, under this rule, DHS recommends, as it did in the NPRM, that an F-2 or M-2 nonimmigrant should separately maintain (i.e., obtain and retain) his or her academic records. As F and M nonimmigrants

⁶ ICE encourages retention of these records in the Supporting Statement for SEVIS, OMB No. 1653–0038, Question 7(d). Additionally, recordkeeping by F and M nonimmigrants is encouraged in existing regulation, in particular for the Form I–20, Certificate of Eligibility for Nonimmigrant Student (F-1 or M-1) Status. See 8 CFR 214.2(f)(2) and 214.2(m)(2). Moreover, nonimmigrant students may wish to retain a copy of the Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants, as proof of payment. See generally 8 CFR 214.13(g)(3).

already are encouraged to keep a number of immigration-related records, the suggested additional maintenance of academic records in an already existing file of immigration records will impose minimal marginal cost. This rule does not extend F-2 or M-2 nonimmigrants' access to any other nonimmigrant benefits beyond those specifically identified in regulations applicable to F-2 or M-2 nonimmigrants. See 8 CFR 214.2(f)(15) and 8 CFR 214.2(m)(17).

IV. Discussion of Comments, Changes, and the Final Rule

DHS received a total of 37 comments on the proposed rule. After reviewing all the comments, DHS is adopting the rule as proposed, with minor technical corrections. Of the 37 comments received, 27 commenters supported the proposal to remove the limit on the number of DSO nominations per campus. These commenters noted that removing this limitation would permit schools to plan their staffing requirements more efficiently across campuses. In addition, the commenters suggested that permitting an increased number of DSOs would permit schools to better serve their students and would enhance their ability to meet SEVIS reporting and oversight requirements. Two commenters, however, recommended against the proposed change because of national security concerns. Because the commenters did not elaborate on the potential concerns they believed might result, and DHS does not consider removing the limitation on the number of DSOs per campus to negatively affect national security, DHS is adopting this provision as proposed.

The majority of comments DHS received in response to the proposed rule supported the proposal to permit F-2 and M-2 nonimmigrants to study at SEVP-approved schools on a less than full-time basis. Many of these commenters argued that the change

would enhance the quality of life of F-2 and M-2 nonimmigrants and would assist the United States in attracting the “best and brightest” students to U.S. institutions. Of these commenters, four asserted that the rule change would have a positive effect on the U.S. economy, particularly with more students paying tuition and buying books and supplies. Two of the commenters also noted that the proposed change would have the benefit of enabling F-2 and M-2 nonimmigrants to learn English at SEVP-approved schools, thereby facilitating their adjustment to life in the United States. One commenter specifically noted appreciation that DHS clarified that an F-2 nonimmigrant could complete a degree, so long as all study at SEVP-approved schools was completed on a less than full-time basis. DHS further notes that this same clarification also applies to an M-2 nonimmigrant, again, so long as all study at SEVP-approved schools occurs on a less than full-time basis.

Four commenters suggested that the regulation change would be improved if it permitted F-2 and M-2 nonimmigrants to study full-time, in addition to permitting them to engage in less than a full course of study. The commenters noted that dependents of other nonimmigrant categories are permitted to study full-time, for example, the J-2 spouses of J-1 exchange visitors. DHS appreciates these comments and has considered them carefully. However, DHS is of the opinion that permitting F-2 and M-2 nonimmigrants to engage in a full course of study would blur fundamental distinctions between the F-1 and F-2, and M-1 and M-2 classifications, respectively. Moreover, it would be illogical to provide greater flexibility for study by F-2 or M-2 dependants than is afforded to F-1 or M-1 principals, respectively. The INA requires F-1 and M-1 principals to pursue a full course of study. INA sections 101(a)(15)(F)(i) and (M)(i); 8

U.S.C. 1101(a)(15)(F)(i) and (M)(i). Congress intended F-1 and M-1 principals to have greater educational opportunities, not fewer, than their F-2 and M-2 dependents. In establishing the F-1 and M-1 classifications for principal nonimmigrant students separate from the F-2 and M-2 classifications for spouses and children, respectively, Congress clearly did not intend the classifications to be synonymous. Accordingly, it would not be appropriate to permit F-2 and M-2 dependents to engage in either full-time or less than full-time study, at the discretion of the individual F-2 or M-2 dependent, when such discretion is not afforded to the F-1 or M-1 principal. DHS thus has maintained the prohibition on full-time study by F-2 and M-2 nonimmigrants.

With respect to the commenters' observation about J-2 dependent spouses, the purpose of the J nonimmigrant classification is fundamentally different from that of the F and M classifications. Admission in J nonimmigrant status permits engagement in multiple activities other than full-time study (e.g., to serve as researchers or professors, or performing other professional duties in the United States). The purpose of the Exchange Visitor Program (J visa) "is to further the foreign policy interest of the United States by increasing the mutual understanding between the people of the United States and the people of other countries by means of mutual educational and cultural exchanges." 9 Foreign Affairs Manual 41.62 N2. Specific Exchange Visitor programs are designated by DOS, not by DHS, and their parameters are set by DOS to advance U.S. foreign policy interests. The same foreign policy interests that apply to J-1 nonimmigrants and their dependents are not implicated in the F and M nonimmigrant context. The primary purpose of the F-1 and M-1 nonimmigrant classifications, in contrast with the J classification, is to permit foreign nationals to enter the United States solely to engage in

full-time study. DHS believes that the best means to preserve the integrity of the F-1 and M-1 classifications, and to ensure these classifications remain the primary vehicles for full-time study, is to require a dependent in F or M status who wishes to engage in a full course of study to make such intent evident by applying for and receiving a change of status to F-1 or M-1.

One commenter advocating for full-time F-2 and M-2 study stated that the limit to less than full-time study is unnecessary, as dependent students do not pose any additional security risk because SEVIS tracks them. DHS disagrees with this commenter. The recordkeeping requirements for F-1 and M-1 nonimmigrants in SEVIS are more comprehensive than they are for F-2 and M-2 dependents, which is a derivative status. Recognizing this, any full-time study in the F and M nonimmigrant classifications should occur only after receiving F-1 or M-1 status through the already existing and available process of changing status. Allowing F-2 and M-2 dependents to take a full course of study would permit their participation in full-time study without the fuller vetting and oversight required for F-1 and M-1 nonimmigrants in SEVIS. DHS therefore disagrees with the commenter that dependents would pose no additional security risk if permitted to take a full course of study. In addition, allowing F-2 and M-2 dependents to take a full course of study could lead to manipulation of F-1 and M-1 visas by allowing one family member who is accepted as an F-1 student to facilitate the full-time enrollment of all other dependents in their own courses of study.

Three commenters suggested that F-2 and M-2 nonimmigrants be permitted to commence their full-time study as soon as they apply for a change of status to F-1 or M-1. One of these commenters also requested that DHS revise the regulations governing

change of status to specify that a nonimmigrant who is granted a change of status to F-1 or M-1 must begin the full course of study no later than the next available session or term after the change of status has been approved. The commenter suggested that individuals granted a change of status to F-1 or M-1 often are concerned that they might lose their new status if they do not enroll in classes immediately, but that this may be impossible if the approval is received midway during the school term or session.

DHS continues to maintain that a foreign national who wishes to engage in a full course of study must apply for and receive a change of status to F-1 or M-1 prior to commencing a full course of study. See 8 CFR 214.2(f)(15)(ii)(B), 214.2(m)(17)(ii)(B) (2013); see also 8 CFR 214.2(f)(15)(ii)(A)(2), 214.2(m)(17)(ii)(A)(2), as finalized herein. Approval of the change of status application before engaging in a full course of study is necessary to maintain the integrity of data in SEVIS, as well as to ensure that appropriate distinctions exist between the F-1 and M-1 classifications and their dependent classifications. DHS declines to elaborate in this rulemaking on the issue of when a nonimmigrant granted a change of status to F-1 or M-1 must commence the full course of study. That issue is beyond the scope of the proposed rulemaking, which focused on permissible study by F-2 and M-2 nonimmigrants, rather than how F-1 and M-1 nonimmigrants should comply with the terms and conditions of their status.

In addition to the comments discussed above, DHS received a number of individual comments on discrete issues. These include one comment requesting that DHS consider extending the option to apply for employment authorization for F-2 and M-2 nonimmigrants with U.S. Citizenship and Immigration Services (USCIS). DHS appreciates the commenter's interest but has determined not to extend employment

authorization to F-2 and M-2 nonimmigrants as part of this rulemaking. The rule's changes to F-2 and M-2 opportunities are intended to increase access of F-2 or M-2 nonimmigrants to education while in the United States and not to increase employment opportunities.

DHS received two comments about the number of training hours and the wage rate for DSOs used in the economic analysis of the rulemaking. The commenters asserted that the number of training hours required for DSOs is closer to a minimum of 90 hours of training in the first year, not seven hours as DHS estimated. The commenters further suggested that DSOs be categorized as professional staff, not administrative, for the purpose of calculating their wage rate.

SEVP does not currently require any specific training for DSOs; however, SEVP does require that DSOs sign a certification that they are familiar with the appropriate regulations and intend to comply with them. In addition, SEVP provides an internet-based voluntary SEVIS training, which DSOs are strongly encouraged to complete. SEVP recognizes that many schools go above and beyond this, and commends these schools. However, other DSOs will not complete any training. Moreover, schools that increase the number of employed DSOs beyond ten as a result of this rule likely already have large offices of international student advisors that may require little to no additional training to perform DSO duties. Because the duties and initial training of DSOs varies widely among schools, with some being above the minimum suggested training by SEVP and others below, DHS believes the seven-hour training estimate is appropriate for the flexibility this rulemaking intends to provide schools.

DHS agrees with the commenters that a different wage rate is appropriate for DSOs and has amended the wage rate estimation in this final rule. DHS is supportive of DSOs and the importance of their role in serving as a link between nonimmigrant students, schools and SEVP. DHS agrees that DSOs are professionals and perform important duties. The occupation code chosen to estimate the DSO wage rate for the analysis is not meant to undermine the importance of the role of the DSO. Rather, it serves as a proxy for the basic job duties required by SEVP of DSOs. DSOs provide advice to students regarding maintenance of their nonimmigrant status and maintaining enrollment, provide information on participation in programs of study in SEVIS, authorize optional practical training, and report to SEVP if a student has violated the conditions of his or her status. Individuals approved as DSOs may also perform other job duties as an element of their employment with schools, which are outside of those required by SEVP, to enhance nonimmigrants' stays in the United States. As noted by one commenter, these duties may include responsibilities ranging from "airport pick-ups, to facilitating intercultural communications workshops." Because schools rely on DSOs to counsel nonimmigrant students of their responsibilities and maintain their nonimmigrant status, and DHS relies on DSOs to ensure the integrity of the program, DHS has amended the category used to estimate the DSO wage rate. In this final rule, DHS revises the wage rate from BLS category 43-9199 Office and Administrative Support Workers, All Other, to BLS category 21-1012 Educational, Guidance, School, and Vocational Counselors. See the **Executive Orders 12866 and 13563: Regulatory Planning and Review** section below for this revision.

Another commenter addressed the procedures used by SEVP to adjudicate changes to DSOs. The commenter expressed concern at the pace of adjudicating requests to add or remove DSOs, and also requested that SEVP publish the criteria it uses in adjudicating changes to DSOs, as well as establish an appeals process for denials of such requests. DHS appreciates these comments, but notes that they are outside the scope of the proposed rulemaking, which focused on the more discrete issue of the regulatory limitation on the number of DSOs permitted at each campus. SEVP, however, is working to make its adjudications process more efficient in the future.

Several commenters identified areas where the rulemaking could benefit from additional clarification or the correction of possible errors. One commenter suggested that DHS clarify whether study of English as a second language (ESL) or intensive English is considered a vocational/recreational or academic study. DHS declines to define whether ESL is properly categorized as a vocational/recreational or academic study because this is outside the scope of the proposed rulemaking. Another commenter questioned whether F-2 and M-2 dependents would be permitted to take only those courses listed as part of the school's academic/certificate programs on the school's Form I-17, or whether F-2 and M-2 dependents would be able to enroll in any program. The regulation should not be interpreted to permit an F-2 or M-2 to enroll in courses in any program offered at an SEVP-certified school, but only a course of study that is SEVP-certified. The same commenter also inquired whether the proposed rule intended to permit full-time "recreational" study only at SEVP-certified schools and only in non-academic, non-accredited courses, or whether the rule would permit F-2 and M-2 dependents to enroll full-time at SEVP-certified schools in non-credit courses. The

regulation does not expand opportunity for full-time study of any type for F-2 and M-2 dependents. The regulations continue to provide that F-2 and M-2 dependents may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

Additionally, one commenter pointed out that the language in the preamble of the proposed rulemaking at 78 FR 69781, explaining the definition of full course of study, implied incorrectly that F nonimmigrants only may enroll at colleges or universities, and not at community colleges or junior colleges. DHS appreciates this comment and agrees that a community college or junior college may appropriately enroll an F nonimmigrant.

Finally, DHS is making four technical corrections to the proposed regulatory text. One commenter noted that the proposed regulatory text at 8 CFR 214.2(f)(15)(ii)(C) referenced paragraph (f)(15)(ii)(A)(2), whereas it should include both paragraphs (A)(1) and (A)(2). DHS agrees with the commenter that this was an error and accordingly has revised the final rule to refer to (f)(15)(ii)(A), so as to apply to both paragraphs. In the course of preparing this final rule, DHS also recognized additional areas of the proposed regulatory text where further revision was necessary for purposes of accuracy and clarity. The proposed text located at 8 CFR 214.2(m)(17)(ii)(A)(1) had omitted a reference to the courses described in 8 CFR 214.2(f)(6)(i)(A)-(D) as a type of course at an SEVP-certified school that an M-2 spouse or M-2 child may enroll in as less than a full course of study. With this rule, courses of study approved under both F and M study are available to both F-2 and M-2 nonimmigrants. Lastly, DHS added a reference to 8 CFR 214.2(m)(14) in the new provision authorizing limited F-2 study at SEVP-certified schools to clarify that F-2 spouses and children are not eligible to engage in any type of employment or

practical training during their studies; correspondingly, DHS added a reference to 8 CFR 214.2(f)(9)-(10) in the new provision authorizing limited M-2 study at SEVP-certified schools for the same reason.

V. Statutory and Regulatory Requirements

DHS developed this rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has not designated this final rule as a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this final rule.

1. Summary

The rule eliminates the limit on the number of DSOs a school may have and establishes eligibility for F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule imposes no additional costs on that school. Based on feedback from the SEVP-certified schools, however, DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified

schools would incur costs related to current DHS DSO documentation requirements and any training DSOs may undertake. DHS estimates the total 10-year discounted cost of allowing additional DSOs to be approximately \$223,000 at a seven percent discount rate and approximately \$264,000 at a three percent discount rate. Regarding the provision of the rule that establishes eligibility for less than a full course of study by F-2 and M-2 nonimmigrants, DHS is once again providing additional flexibilities. As this rule does not require the F-2 or M-2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements, DHS does not believe there are any costs associated with establishing eligibility for F-2 and M-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools.

2. Designated School Officials

The only anticipated costs for SEVP-certified schools to increase the number of DSOs above the current limit of ten per school or campus derive from the existing requirement for reporting additional DSOs to DHS, and any training that new DSOs would undertake. DHS anticipates the number of schools that will avail themselves of this added flexibility will be relatively small. As of April 2012, there are 9,888 SEVP-certified schools (18,733 campuses), with approximately 30,500 total DSOs, and an average of 3.08 DSOs per school. However, there are only 88 SEVP-certified schools that currently employ the maximum number of DSOs.

DHS is unable to estimate with precision the number of additional DSOs schools may choose to add. While some of the 88 SEVP-certified schools that currently employ the maximum number of DSOs may not add any additional DSOs, others may add

several additional DSOs. DHS's best estimate is that these 88 SEVP-certified schools will on average designate three additional DSOs, for a total of 264 additional DSOs.

DHS estimates that current documentation requirements, as well as training a DSO might undertake to begin his or her position, equate to approximately seven hours total in the first year. DHS does not track wages paid to DSOs; however, in response to a comment received on the NPRM, DHS is revising the wage rate used to estimate DSO wages. For this final rule, we are using the U.S. Department of Labor, Bureau of Labor Statistics occupation Educational, Guidance, School, and Vocational Counselors occupational code as a proxy for DSOs.⁷ The average wage rate for this occupation is estimated to be \$27.00 per hour.⁸ When the costs for employee benefits such as paid leave and health insurance are included, the full cost to the employer for an hour of DSO time is estimated at \$37.80.⁹ Therefore, the estimated burden hour cost as a result of designating 264 additional DSOs is estimated at \$69,854 in the first year (7 hours \times 264 DSOs \times \$37.80). On a per-school basis, DHS expects these SEVP-certified schools to incur an average of \$794 dollars in costs in the initial year (7 hours \times 3 new DSOs per school \times \$37.80). DHS notes that there are no recurrent annual training requirements mandated by DHS for DSOs once they have been approved as a DSO.

⁷ The existing Paperwork Reduction Act control number OMB No. 1653-0038 for SEVIS uses the occupation "Office and Administrative Support Workers, All Other" as a proxy for DSO employment. However, DHS received comment on the NPRM that this is not the best category for the job duties or wages of a DSO, and suggesting that Counselor is more appropriate. Therefore, for this Final Rule, DHS has revised the BLS occupational code to Educational, Guidance, School, and Vocational Counselors.

⁸ May 2012 Occupational Employment and Wage Estimates, National Cross-Industry Estimates, "21-1012 Educational, Guidance, School, and Vocational Counselors," Hourly Mean "H-mean," <http://www.bls.gov/oes/2012/may/oes211012.htm> (last modified Mar. 29, 2013).

⁹ Employer Costs for Employee Compensation, June 2012, http://www.bls.gov/news.release/archives/ecec_09112012.htm (last modified Sept. 11, 2012). Calculated by dividing total private employer compensation costs of \$28.80 per hour by average private sector wage and salary costs of \$20.27 per hour (yields a benefits multiplier of approximately 1.4 \times wages).

After the initial year, DHS expects the SEVP-certified schools that designate additional DSOs to incur costs for replacements, as these 264 new DSOs experience normal turnover. Based on information from the Bureau of Labor Statistics, we estimate an average annual turnover rate of approximately 37 percent.¹⁰ Based on our estimate of 264 additional DSOs as a result of this rulemaking, we expect these schools will designate 98 replacement DSOs annually ($264 \text{ DSOs} \times 37 \text{ percent annual turnover}$) in order to maintain these 264 additional DSOs. As current training and documentation requirements are estimated at seven hours per DSO, these SEVP-certified schools would incur total additional costs of \$25,931 annually ($7 \text{ hours} \times 98 \text{ replacement DSOs} \times \37.80) after the initial year. On a per school basis, DHS expects these schools to incur an average of \$294 dollars of recurring costs related to turnover after the initial year ($7 \text{ hours} \times 3 \text{ new DSOs per school} \times 37 \text{ percent annual turnover} \times \37.80).

This rule addresses concerns within the U.S. education community that the current DSO limit of ten is too constraining. For example, allowing schools to request additional staff able to handle DSO responsibilities will increase flexibility in school offices and enable them to better manage their programs. This flexibility is particularly important in schools where F and M nonimmigrants are heavily concentrated or where instructional sites are in dispersed geographic locations. It will also assist schools in coping with seasonal surges in data entry requirements (e.g., start of school year reporting).

3. F-2 and M-2 Nonimmigrants

¹⁰ Job Openings and Labor Turnover—Jan. 2013 (Mar. 12, 2013), http://www.bls.gov/news.release/archives/jolts_03122013.pdf reported that for 2012, annual total separations were 37.1 percent of employment.

As of June 2012, SEVIS records indicate that there are 83,354 F-2 nonimmigrants in the United States, consisting of approximately 54 percent spouses and 46 percent children. Though both spouses and children may participate in study that is less than a full course of study at SEVP-certified schools under this rule, DHS assumes that spouses are more likely to avail themselves of this opportunity because most children are likely to be enrolled full-time in elementary or secondary education (kindergarten through twelfth grade). Though there may be exceptions to this assumption, for example, a child in high school taking a college course, the majority of F-2 nonimmigrants benefitting from this provision are likely to be spouses. DHS only uses this assumption to assist in estimating the number of F-2 nonimmigrants likely to benefit from this rule, which could be as high as 45,011 ($83,354 \times 54$ percent), if 100 percent of F-2 spouses participate, but is likely to be lower as DHS does not expect that all F-2 spouses would take advantage of the opportunity. DHS does not believe there are any direct costs associated with establishing eligibility for F-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools. The rule would not require the F-2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements. In the NPRM, DHS requested comment on these assumptions and estimates. No comments were received in response to this request.

As of June 2012, SEVIS records indicate that there are 578 M-2 nonimmigrants in the United States. Pursuant to this rulemaking, these M-2 spouses and children will be eligible to take advantage of the option to participate in study that is less than a full course of study at SEVP-certified schools. Approximately 39 percent of M-2 nonimmigrants are spouses and 61 percent are children. Again, DHS assumes that

spouses would comprise the majority of M-2 nonimmigrants to benefit from this provision. This number could be as high as 225 M-2 nonimmigrants (578×39 percent), but is likely to be lower as DHS does not expect that all M-2 spouses would take advantage of the opportunity. Under the same procedures governing F-2 nonimmigrants, the M-2 nonimmigrants would not be required to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements. In the NPRM, DHS requested comment on these assumptions and estimates. No comments were received in response to this request.

The rule provides greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students in F-1 or M-1 status to enroll in study at a SEVP-certified school if not a full course of study. DHS recognizes that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools. The ability of F-2 or M-2 nonimmigrants to have access to education while in the United States is in many instances central to maintaining a satisfactory quality of life for these visiting families.

4. Conclusion

The rule eliminates the limit on the number of DSOs a school may have and establishes eligibility for F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule imposes no additional costs on that school. DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified schools would incur costs related to current DHS DSO training and

documentation requirements; DHS estimates the total 10-year discounted cost to be approximately \$223,000 at a seven percent discount rate and approximately \$264,000 at a three percent discount rate. DHS does not believe there are any costs associated with establishing eligibility for F-2 and M-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools as this rule does not require the F-2 or M-2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements.

The table below summarizes the total costs and benefits of the rule to allow additional DSOs at schools and permit accompanying spouses and children of nonimmigrant students of F-1 or M-1 status to enroll in study at a SEVP-certified school if not a full course of study. In the NPRM, DHS welcomed public comments that specifically addressed the nature and extent of any potential economic impacts of the proposed amendments that we may not have identified. DHS specifically requested comments in the NPRM on whether there were any additional burdens imposed on F-2 and M-2 nonimmigrants related to additional record storage costs. No comments were received in response to this request.

	DSOs	F-2 and M-2 Nonimmigrants	Total Rulemaking
10-Year Cost, Discounted at 7 Percent	\$223,000	\$0	\$223,000
Total Monetized Benefits	N/A	N/A	N/A
Non-monetized Benefits	Increased flexibility in school offices to enable them to better manage their programs	Greater incentive for international students to study in the U.S. by permitting accompanying spouses and children of nonimmigrant students with F-1 or M-1 status to enroll in study at a SEVP-certified school if not a full course of study.	
Net Benefits	N/A	N/A	N/A

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule eliminates the limit on the number of DSOs a school may nominate and permits F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. Although some of the schools impacted by these changes may be considered as small entities as that term is defined in 5 U.S.C. 601(6), the effect of this rule is to benefit those schools by expanding their ability to nominate DSOs and to enroll F-2 and M-2 nonimmigrants for less than a full course of study.

In the subsection above, DHS has discussed the costs and benefits of this rule. The purpose of this rule is to provide additional regulatory flexibilities, not impose costly mandates on small entities. DHS again notes that the decision by schools to avail

themselves of additional DSOs or F-2 or M-2 nonimmigrants who wish to pursue less than a full course of study is an entirely voluntary one and schools will do so only if the benefits to them outweigh the potential costs. In particular, removing the limit on the number of DSOs a school may designate allows schools the flexibility to better cope with seasonal surges in data entry requirements due to start of school year reporting. Accordingly, DHS certifies this rule will not have a significant economic impact on a substantial number of small entities. DHS received no comments challenging this certification.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of DHS, call 1-888-REG-FAIR (1888-734-3247). DHS will not retaliate against small entities that question or complain about this rule or any policy or action of DHS.

D. Collection of Information

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995), 44 U.S.C. 3501-3520. This information collection is covered under the existing Paperwork Reduction Act control number OMB No. 1653-0038 for the Student and Exchange Visitor Information System (SEVIS). This rule calls for no new collection of information under the Paperwork Reduction Act.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under the Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not a significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This final rule is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The

Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023-01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR Parts 1500–1508. CEQ regulations allow federal agencies to establish categories of actions which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023-01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023-01 app. A tbl.1.

For an action to be categorically excluded, MD 023-01 requires the action to satisfy each of the following three conditions:

- (1) The entire action clearly fits within one or more of the Categorical Exclusions;
- (2) The action is not a piece of a larger action; and
- (3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023-01 app. A § 3.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023-01 requires the administrative record to reflect consideration of these conditions. MD 023-01 app. A § 3.B.

Here, the rule amends 8 CFR 214.2 and 214.3 relating to the U.S. Immigration and Customs Enforcement Student and Exchange Visitor Program. This rule removes the regulatory cap of ten designated school officials per campus participating in the SEVP and permits certain dependents to enroll in less than a full course of study at SEVP-certified schools.

ICE has analyzed this rule under MD 023-01. ICE has made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule clearly fits within the Categorical Exclusion found in MD 023-01, Appendix A, Table 1, number A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

The Amendments

For the reasons discussed in the preamble, DHS amends Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 214--NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

2. In § 214.2 revise paragraphs (f)(15)(ii) and (m)(17)(ii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(15) * * *

(i) * * *

(ii) Study. (A) F-2 post-secondary/vocational study. (1) Authorized study at SEVP-certified schools. An F-2 spouse or F-2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) and (m)(9)(i) through (iv), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (iv) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the F-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An F-2 spouse or F-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraphs (f)(9) and (10) of this section or pursuant to paragraph (m)(14) of this section.

(2) Full course of study. Subject to paragraphs (f)(15)(ii)(B) and (f)(18) of this section, an F-2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F-1, M-1 or J-1 nonimmigrant status, as appropriate, before beginning a full course of study. An F-2 spouse and child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) F-2 elementary or secondary study. An F-2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An F-2 spouse and child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

* * * * *

(m) * * *

(17) * * *

(i) * * *

(ii) Study. (A) M-2 post-secondary/vocational study. (1) Authorized study at SEVP-certified schools. An M-2 spouse or M-2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the M-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An M-2 spouse or M-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraph (m)(14) of this section or pursuant to paragraphs (f)(9) through (10) of this section.

(2) Full course of study. Subject to paragraph (m)(17)(ii)(B) of this section, an M-2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F-1, M-1, or J-1 status, as appropriate, before beginning a full course of study. An M-2 spouse and M-2 child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) M-2 elementary or secondary study. An M-2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An M-2 spouse or child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (m)(17)(ii)(A) or (B) of this section.

* * * * *

3. Revise § 214.3(l)(1)(iii) to read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

* * * * *

(l) * * *

(1) * * *

(iii) School officials may nominate as many DSOs in addition to PDSOs as they determine necessary to adequately provide recommendations to F and/or M students enrolled at the school regarding maintenance of nonimmigrant status and to support timely and complete recordkeeping and reporting to DHS, as required by this section. School officials must not permit a DSO or PDSO nominee access to SEVIS until DHS approves the nomination.

* * * * *

Jeh Charles Johnson,
Secretary.
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